



Towards A New Chapter 40B: Proposed 2003 Legislation

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Highlights

The Basics of Chapter 40B

Getting to 10%

The Proposed Changes
Planning for Housing
Affirmative Defenses for Your Community
Other Provisions





The Basics of 40B







What is Chapter 40B?

- Enacted in 1969, Chapter 40B is a state statute, the Comprehensive Permit Law
- Enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 25% of units have long-term affordability restrictions







What is the intent of Chapter 40B?

- In 1969 recognition that zoning practices play a role in driving up housing costs and inhibiting the broad distribution of affordable housing
- In 2003 to address the shortage of affordable housing statewide by reducing unnecessary barriers created by local zoning and other restrictions







What are the Benefits of Chapter 40B?

- Increases the supply of low/moderate income housing
- Improves regional distribution of low/moderate income housing
- Allows town boards and committees to work cooperatively and simultaneously with the ZBA to structure a project







What are the Basic Requirements for 40B Developments?

- The project must have a project eligibility letter issued by a state or federal subsidy program
- The project developer must have site control
- At least 25% of the units in the proposed project must be restricted over time for rent or sale to households at or below 80% of area median income
- Profit is limited: the development entity must be a public agency, a nonprofit organization, or a limited dividend organization



The Proposed Changes







Recent Regulatory Changes

- Three rounds of regulation changes from 2001-2003
- 2002 regulations incorporated Chapter 40B changes adopted by the legislature in the 2002 Housing Bill
- 15 total regulation changes increasing local control over development







Proposed Legislative Changes

- Chapter 40B Task Force
 - Convened by Governor Romney in February 2003 and composed of legislators, state housing officials, municipal and regional officials, and stakeholders representing development, community, and environmental interests
 - Endorsed regulation changes promulgated by DHCD
 - Recommended 17 additional changes to improve the Chapter 40B process and increase planning and local control over development







Proposed Legislative Changes

- 2003 Chapter 40B Legislation
 - "An Act Promoting Affordable Housing and Community Planning in the Commonwealth"
 - Drafted by the Joint Committee on Housing and Urban Development
 - HUD Committee Chairs served on the Chapter 40B Task Force







Proposed Legislative Changes

- 2003 Chapter 40B Legislation
 - Incorporates regulations and Task Force recommendations into Chapter 40B
 - Allows mixed uses in Chapter 40B developments
 - Emphasizes planning and smart growth
 - Eliminates general land area minimum, which encourages sprawl development







What's the best way to get to 10%?

Plan, Plan, Plan!!!







Planned Production

If a community adopts a plan to meet its low or moderate income housing need and has that plan approved by DHCD, and then complies with the production goals of that plan, it may deny comprehensive permits.







<u>Planned Production</u> – Elements

- Addresses a mix of housing
- Identifies a housing strategy
- Identifies characteristics of preferred projects
- Describes use restrictions
- Identifies zoning districts that can or will accommodate housing
- Identifies sites (or their characteristics) that are appropriate for housing







Planned Production – Benefits

Key Benefit:

Communities have control over how, when, and where housing is built.







Planned Production – Benefits

Create 0.5% = deny comprehensive permits for 1 year

Create 1.0% = deny comprehensive permits for 2 years

Create 1.5% = deny comprehensive permits for 3 years







Planned Production – Example

If a community with 5,000 housing units had an approved plan and it:

- created 25 eligible housing units, it could deny comprehensive permits for 1 year.
- created 50 eligible housing units, it could deny comprehensive permits for 2 years.
- created 75 eligible housing units, it could deny comprehensive permits for 3 years.







What's an affirmative defense?

With respect to Chapter 40B, affirmative defenses allow a zoning board of appeals to deny or condition a comprehensive permit if certain criteria can be demonstrated, and the denial will be upheld on appeal as a matter of law. Examples of affirmative defenses follow.







- 1. Planning Planned Production
- 2. Planning Regional Housing Plan Pilot Program
- 3. Affordable Housing Threshold has been met (10% of housing units are restricted for use by low- or moderate income households).







- 4. The proposed development is too "large scale" for the community, based upon the number of housing units within the community.
- 5. The community has made "recent progress" towards its affordable housing threshold.







- 6. The application is a "related application," meaning that 12 months has not elapsed since the date of most recent pendency of a prior application, if the prior application did not contain low- or moderate-income housing.
- 7. The ZBA has approved 3 or more comprehensive permits (each for 20 or more units) in the last 12 months.







- Smart growth would become a key component of affordable housing development.
- Mixed uses would be allowable in comprehensive permit developments.
- Communities could establish local programs to create housing that counts toward their affordable housing threshold.







- Communities could hold a public meeting with local officials and the developer to create a full understanding of the proposal before a determination of project eligibility is issued.
 - So the community can provide informed commentary on the proposal that must be considered by the subsidizing agency.







Planning – The Housing Appeals Committee shall receive evidence of and shall consider a city or town's master plan, comprehensive plan, or community development plan and the results of a city or town's efforts to implement such plans.



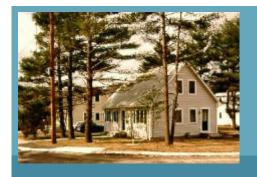




Massachusetts Housing Partnership Fund would collect fees from developers to provide technical assistance/consulting services to communities in which comprehensive permit applications have been made.







- DHCD would make planning and housing development information and resources available to assist communities.
- Contiguous communities could agree to share credit for housing developments where infrastructure and other costs are shared.







Rental Units

- If 25% of units are restricted to serve households with incomes no greater than 80% of the area median, all units would count.
- If 20% of units are restricted to serve households with incomes no greater than 50% of the area median, all units would count.







- Ownership Units
 - If 25% of units are restricted to serve households with incomes no greater than 80% of the area median, twice the number of restricted units would count.
 - If 20% of units are restricted to serve households with incomes no greater than 50% of the area median, twice the number of restricted units would count.







- Rental and Ownership Units
 - If fewer than 25% of units are restricted to serve households with incomes no greater than 80% of the area median, only restricted units would count.







- Changes to the law will simplify how units count.
 - Community Preservation Act Units
 - Accessory Apartment Units
 - Group Home Units (DMR/DMH)
 - Housing Units developed under Local Programs
 - Urban Center Housing/Tax Increment Financing Units
 - Expiring Use Units







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